

AMENDED IN ASSEMBLY JULY 5, 2012

AMENDED IN ASSEMBLY JUNE 20, 2012

AMENDED IN SENATE MAY 2, 2012

AMENDED IN SENATE APRIL 11, 2012

SENATE BILL

No. 1154

**Introduced by Senator Walters
(Coauthors: Senators Alquist and Lowenthal)**

February 21, 2012

An act to add Section ~~60064~~ 60063.5 to the Education Code, relating to instructional materials.

LEGISLATIVE COUNSEL'S DIGEST

SB 1154, as amended, Walters. Instructional materials: digital format.

Existing law requires the State Board of Education to adopt at least 5 basic instructional materials in specified subject areas for use in kindergarten and grades 1 to 8, inclusive, for district boards, as defined. Existing law also requires the governing board of each school district maintaining one or more high schools to adopt instructional materials that meet specified criteria for use in the high schools under its control. Existing law prohibits the state board from adopting instructional materials until the 2015–16 school year.

Existing law requires a publisher or manufacturer of instructional materials to provide to the state, at no cost, computer files or other electronic versions of each state-adopted literary title and the right to transcribe, reproduce, modify, and distribute the material in braille, large print if the publisher does not offer a large print edition, recordings, American Sign Language videos for the deaf, or other specialized

accessible media exclusively for use by pupils with visual or other disabilities that prevent use of standard instructional materials.

~~This bill would require a publisher or manufacturer submitting a printed instructional material for adoption by the state board or the governing board of a school district to, among other things, offer the that offers printed instructional material materials in an equivalent digital format to offer the digital format at a the same or lower cost than the cost of the purchased printed format, and would require a publisher or manufacturer of printed supplemental instructional materials approved by the state board or the governing board of a school district to, among other things, offer the supplemental instructional materials in an equivalent digital format at a the same or lower cost than the cost of the purchased printed format. The bill would, if the publisher or manufacturer cannot obtain copyright due to a 3rd-party contract conflict, authorize an equivalent digital format to be substituted with comparable digital materials, as specified. The bill also would require a publisher or manufacturer to offer to a school district an equivalent digital format of instructional material that was purchased in a printed format, which may be used authorize a school district to use instructional materials in digital format that were purchased by the school district to create a districtwide online digital database for classroom use, as specified. The bill would further require that the instructional material or supplemental instructional material be available in both printed and digital formats for the duration of the adoption. The bill would exempt from these requirements small publishers and small manufacturers of instructional materials, as defined, and would specify that these provisions be implemented in accordance with specified provisions suspending the adoption of instructional materials by the state board.~~

The bill would become operative only if AB 1790 of the 2011–12 Regular Session is enacted.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 60063.5 is added to the Education Code,
- 2 to read:
- 3 60063.5. (a) If a publisher or manufacturer offers printed
- 4 instructional materials in an equivalent digital format pursuant

1 to Section 60063, the digital format shall be offered at the same
2 or lower cost than the cost of the purchased printed format.

3 (b) A publisher or manufacturer of printed supplemental
4 instructional materials shall offer the printed supplemental
5 instructional materials in an equivalent digital format, at the same
6 or lower cost than the cost of the purchased printed format.

7 (c) For purposes of this section, if a publisher or manufacturer
8 cannot obtain copyright due to a third-party contract conflict, an
9 equivalent digital format may be substituted with comparable
10 digital material when adopting instructional materials as follows:

11 (1) For kindergarten to grade 8, inclusive, the state board may
12 review and approve substitutions to ensure alignment with the
13 pertinent state subject matter content standards.

14 (2) For grades 9 to 12, inclusive, the governing board of a
15 school district may review and approve substitutions to ensure
16 alignment with the pertinent state subject matter content standards.

17 (d) Instructional materials or supplemental instructional
18 materials shall be offered by a publisher or manufacturer as
19 unbundled elements to enable the digital material or printed
20 materials to be purchased separately from other components.

21 (e) A school district may use instructional materials in digital
22 format that were purchased by the school district to create a
23 districtwide online digital database for classroom use consistent
24 with an online security system that is mutually agreed on by the
25 publisher and the school district.

26 (f) (1) The requirements of this section shall not apply to a
27 small publisher or small manufacturer of instructional materials.

28 (2) For purposes of this subdivision, “small publisher” and
29 “small manufacturer” mean an independently owned or operated
30 publisher or manufacturer that, together with its affiliates, has
31 100 or fewer employees and average annual gross receipts of ten
32 million dollars (\$10,000,000) or less over the previous three years.

33 (g) This section does not authorize the use of instructional
34 materials that would constitute an infringement of copyright under
35 the federal Copyright Revision Act of 1976, as amended (17 U.S.C.
36 Sec. 101 et seq.).

37 (h) This section shall be implemented in accordance with the
38 suspension of the instructional materials adoption process pursuant
39 to Section 60200.7.

1 (i) *This section does not require a publisher or manufacturer*
2 *that submits instructional materials in digital format only for*
3 *adoption by the state board or the governing board of a school*
4 *district to offer or submit an equivalent print version of the*
5 *instructional materials in digital format.*

6 (j) *This section shall become operative only if Assembly Bill*
7 *1790 of the 2011–12 Regular Session is also enacted and takes*
8 *effect.*

9 ~~SECTION 1. Section 60064 is added to the Education Code,~~
10 ~~to read:~~

11 ~~60064. (a) A publisher or manufacturer submitting a printed~~
12 ~~instructional material for adoption by the state board or the~~
13 ~~governing board of a school district shall offer the instructional~~
14 ~~material in an equivalent digital format, at a lower cost than the~~
15 ~~cost of the purchased printed format.~~

16 ~~(b) A publisher or manufacturer of printed supplemental~~
17 ~~instructional materials approved by the state board or the governing~~
18 ~~board of a school district shall offer the printed supplemental~~
19 ~~instructional materials in an equivalent digital format, at a lower~~
20 ~~cost than the cost of the purchased printed format.~~

21 ~~(c) For purposes of this section, if a publisher or manufacturer~~
22 ~~cannot obtain copyright due to a third-party contract conflict, an~~
23 ~~equivalent digital format may be substituted with comparable~~
24 ~~digital material when adopting instructional materials as follows:~~

25 ~~(1) For kindergarten to grade 8, inclusive, the state board may~~
26 ~~review and approve substitutions to ensure alignment with the~~
27 ~~pertinent state subject matter content standards.~~

28 ~~(2) For grades 9 to 12, inclusive, the governing board of a school~~
29 ~~district may review and approve substitutions to ensure alignment~~
30 ~~with the pertinent state subject matter content standards.~~

31 ~~(d) Instructional material or supplemental instructional materials~~
32 ~~shall be offered by a publisher or manufacturer as unbundled~~
33 ~~elements to enable the digital material or printed material to be~~
34 ~~purchased separately from other components.~~

35 ~~(e) A publisher or manufacturer that submits printed instructional~~
36 ~~material for adoption or approval by the state board or the~~
37 ~~governing board of a school district shall offer the school district~~
38 ~~an equivalent digital format of the instructional material that was~~
39 ~~purchased in print format which may be used by the school district~~
40 ~~to create a districtwide online digital database for classroom use.~~

1 ~~(1) A school district shall not be prevented from entering into~~
2 ~~an agreement to create a districtwide online digital database with~~
3 ~~the publisher of the instructional materials, or a third party~~
4 ~~approved by the publisher, for classroom or individual pupil use~~
5 ~~if the school district implements an online security system that is~~
6 ~~mutually agreed on by the publisher and the school district.~~

7 ~~(2) A purchase agreement entered into pursuant to paragraph~~
8 ~~(1) may include, but is not limited to, a description of reasonable~~
9 ~~security measures that may include, but are not limited to, the use~~
10 ~~of a login identification and password to protect and control access~~
11 ~~to online material and a description of any licensing agreements~~
12 ~~for access to online material, if applicable.~~

13 ~~(f) The instructional material or supplemental instructional~~
14 ~~material shall be available in both printed and digital formats for~~
15 ~~the duration of the adoption.~~

16 ~~(g) (1) The requirements of this section shall not apply to a~~
17 ~~small publisher or small manufacturer of instructional materials.~~

18 ~~(2) For purposes of this subdivision, “small publisher” and~~
19 ~~“small manufacturer” mean an independently owned or operated~~
20 ~~publisher or manufacturer that, together with its affiliates, has 100~~
21 ~~or fewer employees and average annual gross receipts of ten million~~
22 ~~dollars (\$10,000,000) or less over the previous three years.~~

23 ~~(h) This section does not authorize the use of instructional~~
24 ~~materials that would constitute an infringement of copyright under~~
25 ~~the federal Copyright Revision Act of 1976, as amended (17 U.S.C.~~
26 ~~Sec. 101 et seq.).~~

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28 ~~suspension of the instructional material adoption process pursuant~~
29 ~~to Section 60200.7.~~

30 ~~(j) This section does not require a publisher or manufacturer~~
31 ~~that submits an instructional material in digital format only for~~
32 ~~adoption by the state board or the governing board of a school~~
33 ~~district to offer or submit an equivalent print version of the~~
34 ~~instructional material in digital format.~~